

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1452 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DINRESH HIRALAL MISTRI

Versus

STATE OF GUJARAT

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Appearance:

MR. MANOJ POPAT, with MR AR GUPTA for Petitioner  
MR D.N. PATEL, APP for Respondent No. 2  
MR B.M. MANGUKIA, Advocate for Respondent No.5.  
MR PR NANAVATI for Respondent No. 4, 6 and 7

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE K.R.VYAS

Date of decision: 11/11/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

In this habeas corpus petition, an allegation is made by the father of the minor girl Misa Mistry, the petitioner herein, that she was kidnapped by the

respondents Nos. 4 and 5 with the connivance and active support of the respondents Nos. 6 to 8. According to the petitioner Misa was born on 30.8.1980 and was therefore, a minor on the date of the incident i.e. 28th October, 1997. It was alleged that she was kidnapped by Mustaq, Aman and Seles in their Zen car, while the respondents Nos. 4 and 5 engaged the family of the petitioner in conversation. According to the petitioner, Misa was kidnapped by the respondent Nos. 4 to 8 and they had illegally detained her. An F.I.R was lodged as per Annexure "A" to the petition by the petitioner on 28.10.1997.

By earlier order dated 3.11.1997 made by our esteemed brother Hon'ble Mr. Justice S.D. Pandit, the investigation Officer - respondent No.3 was directed to file a detailed report on affidavit about the investigation carried out by him, and, to produce the daughter of the petitioner before this Court on 12.11.97.

Today, the learned Counsel for the respondent Nos. 4, 6 and 7 had mentioned before us that the respondent No.4 and the girl have come and that the matter, which was scheduled to be heard on 12.11.97 should be taken up for hearing today. We asked the learned Counsel to make a joint motion by all the Counsel for the parties in this regard. Accordingly, the matter was fixed in the second session in our chamber and we have heard the matter at the insistence of all the learned Counsel of all the parties who were present.

We individually talked to the minor girl Misa, the respondent No.4 Tims, the parents of the minor girl and the parents of the boy. Thereafter, we again called all the lawyers representing the parties to this petition and apprised them of the fact that the minor girl has stated that she did not want to go with her parents, but wanted to go with the boy. The minor girl and the boy and their parents also remained present when she reiterated that she had gone of her own with the respondent No.4 and that she did not want to go with her parents, but wants to go with the respondent No.4.

The petitioner who is serving as an Assistant Director in the Income Tax Department and his wife stated before us that Misa is their only female child and that she is studying in First Year B.A. They have stated that they will not in any manner harass the girl and will allow her to study further. From her birth certificate it is shown that she is a minor being born on 30.8.1980. Though the girl Misa has expressed herself against going

with her father, we find that having been in the company of the respondent No.4 after 28.10.1997, she may not quite understand her own welfare, being a minor. As stated by the respondent No.4 and his learned Counsel, the respondent No.4 Tims is still a teenager being born on 7.7.1979 and having just completed 18 years of age. We feel that at this stage her interest would be best served by her remaining with her parents and pursuing her studies. We have no reason to believe that the parents will not look after her well or cause any harassment to her, she being the only daughter. Having regard to all the relevant facts and circumstances of the case, we direct that the minor girl Misa be taken by her father and natural guardian, the petitioner, in his custody and the petitioner will allow her to pursue her studies and maintain her with due love, affection and care as is expected of a father. Rule is made absolute accordingly.

At this stage, the learned Counsel for the respondent No.4, 6 and 7 submits that this order may be stayed for a period of 4 weeks, since the girl had shown her desire to go with the respondent No.4 and not with her father on the ground that they are harassing her. We are unable to accede to this request. The minor girl Misa is the only daughter of the petitioner, who is a responsible officer of the Income Tax Department. We had a talk with the petitioner and his wife, the parents of respondent No.4 boy, and the respondent No.4, as also with the minor girl Misa individually as well as collectively. We gathered an impression that the minor girl Misa is at present carried away by her new found emotional attachment and we do not find any valid reason for doubting the parents and we feel that her welfare will be best served if she is allowed to remain with her parents. The request is therefore, rejected.

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\*/Mohandas